IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6216 of 2007()

CRIME NO. 360/07 OF MEDICAL COLLEGE POLICE STATION, KOZHIKODE

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PETITIONERS/ACCUSED

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1. T.BASHEER, S/O.ABDURAHIMAN,
   THADATHIL HOUSE.

2. T.KABEER,
   S/O.ABDURAHIMAN, THADATHIL HOUSE.

3. T.MUNEER,
   S/O.ABDURAHIMAN, THADATHIL HOUSE.

4. T.SUJEER,
   S/O.ABDURAHIMAN,
   THADATHIL HOUSE.

5. K.M.SUNIL KUMAR,
   KANNACHERI MEETHAL HOUSE.

6. K.M.SUNDHARAN,
   S/O.KUMARAN,
   KANNACHERI MEETHAL HOUSE.

7. K.BIJEESH,
   S/O.BALAKRISHNAN,
   CHERUVATTEDATH HOUSE,
   (ALL ARE RESIDING AT PERUMANNA AMSOM
   P.O.PANTHEERANKAVU, KOZHIKODE).

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. SUB INSPECTOR OF POLICE,
   MEDICAL COLLEGE POLICE STATION,
   KOZHIKODE.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6216 of 2007

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Dated this the 22nd day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 7 in a crime registered for offences, inter alia, under Section 326 r/w. 149 I.P.C. The prosecution allegation in a nut shell is that infuriated by exchange of words and altercation in an earlier incident, the petitioners allegedly attacked the defacto complainant and others with dangerous weapons. The defacto complainant had suffered a fracture of fibula on account of such attack. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. According to the petitioners, there is a counter case also. In the counter case a relative of the petitioners was attacked by the defacto complainant and others. On account of animosity, false allegations of a subsequent incident are being raised. The petitioners may be granted anticipatory bail, submits the counsel. The learned counsel submits that a careful reading of the F.I.R.s in both the cases must reveal that the incident

had taken place at 6 p.m. and that the attempt to make out that a later incident had taken place is not justified at all.

3. The learned Prosecutor opposes the application. He submits that the sequence of events narrated clearly show that the later incident was a retaliation against the first incident. In these circumstances anticipatory bail may not be granted to the petitioners.

4. Having considered all the relevant inputs, I am not persuaded to agree that this is a fit case where directions under Section 438 Cr.P.C. can or ought to be issued. I take note of the submission of the learned Prosecutor that the counter case has already been investigated and a decision to refer the case has been taken. The earlier incident was only the provocation for the next incident and it is incorrect to say that two incidents are in the nature of case and counter case. The former incident was only the motive for the later incident and in these circumstances the petitioners may not be granted anticipatory bail, submits the learned Prosecutor.

5. I find force in the submissions of the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and

normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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